

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, January 29, 2003, at 6:30 p.m. in Room 155/159 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: Linda Radler, Chairman
James Ward
Paul Schultz
Mary Voelker
Darryl Judson

BOARD MEMBERS ABSENT: Robert Bartholomew

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT: Town of Merton Board of Adjustment
Robert Stein, BA02:131, petitioner
Steven Hoehn, BA02:133, petitioner
Bob Anderson, BA02:133, builder
Charles Allen, BA02:134, petitioner
Jeremy Flint, BA02:134, architect
David Stifter, BA02:134, builder
George and Jacquelin Sargent, BA02:134, neighbors
Herbert and Elena Marquardt, BA02:134, neighbors
Diana Boettcher, BA02:134, neighbor
Jerry and Beverly Peterson, BA02:134, neighbors
John and Charlotte Lavin, BA02:135, petitioners
Bob Williams, TDI Associates, Inc., BA02:135, architect
Roger Maio, BA02:135, neighbor
Dave Harris, BA02:135, neighbor
Arno Ledebuhr, BA02:135, neighbor
Catherine Lange, BA02:132, petitioners
Todd Lynch, BA02:136, builder
Roger Thorson, BA02:039, petitioner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Ms. Voelker *I make a motion to approve the Summary of the Meeting of December 11, 2002.*

The motion was seconded by Mr. Ward and carried unanimously.

NEW BUSINESS:

PROFESSIONAL DEVELOPMENT WORKSHOPS FOR ZONING STAFF

After discussion, the Board decided not to approve the attendance of Board members at the Professional Development Workshops for Zoning Staff to be conducted at the Kenosha County Center on February 7, 2003, because only one hour of the program is concerned with Board of Adjustment matters.

BA02:129 ROBERT & BARBARA RUSSELL (Held in Abeyance from January 15, 2003)

Ms. Voelker *I make a motion to hold this case in abeyance until our next meeting on February 12, 2003.*

The motion was seconded by Mr. Schultz and carried unanimously.

BA02:131 ROBERT STEIN

Mr. Schultz *I make a motion approve the request in accordance with the staff's recommendation, as stated in the Staff Report.*

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed addition and covered porch shall extend no closer to the south lot line than the existing residence, thus requiring a special exception, rather than a variance, from the minimum required offset.
2. Prior to the issuance of a zoning permit, a plat of survey of the property, showing the location of all existing buildings and the proposed addition and covered porch, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. In order to verify that the proposed addition is in conformance with the above condition, that plat of survey must indicate the offsets of the existing residence and the proposed addition from the south lot line.
3. Prior to the issuance of a zoning permit, a complete set of plans for the proposed addition and covered porch must be submitted to the Planning and Zoning Division staff for review and approval.
4. Prior to the issuance of a zoning permit, a detailed cost estimate for the proposed construction must be submitted to the Planning and Zoning Division staff.

5. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of a special exception to permit the construction of an addition and covered porch on the road side of the residence, with the recommended conditions, will permit a minor expansion to the residence that will improve the design without further encroaching into the sideyard offset. Since, as recommended, the proposed addition would require a special exception, rather than a variance, from the required offset, it is not necessary to demonstrate that denial of the request would result in an unnecessary hardship. The existing residence is a substantial structure, which is in good condition and only slightly non-conforming, and it would serve no useful purpose to require the proposed 10 ft. addition to be located farther from the side lot line than the existing residence. The proposed addition will not adversely affect the adjacent property and is not contrary to the public interest. Therefore, the approval of a special exception to permit the construction of an addition and covered porch on the road side of the residence, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA02:133 STEVEN & CARLENE HOEHN

Ms. Voelker

I make a motion to adopt the staff's recommendation, as stated in the Staff Report.

The motion was seconded by Mr. Ward and carried with four yes votes. Mr. Schultz voted no.

The staff's recommendation was for denial of shore and floodplain setback variances for the proposed addition to the residence and denial of an offset variance for the proposed detached garage, but approval of a floor area ratio variance and an accessory building floor area ratio special exception to permit the residence to be remodeled and enlarged and to permit the existing detached garage to be replaced with a larger detached garage, subject to the following conditions:

1. The overall size of the proposed addition to the residence may be no larger than indicated on the plans submitted with this application.
2. The proposed addition to the residence and the proposed detached garage must be located in conformance with the offset, shore setback, floodplain setback, and road setback requirements of the Ordinance.
3. Any proposed decks or patios must also conform with the offset, shore setback, and floodplain setback requirements of the Ordinance.

4. The “kitchenette” in the lower level may not be a full kitchen, i.e., it may not contain both a refrigerator and a stove.
5. The footprint of the new detached garage may be no larger than 748 sq. ft. This will permit a 22 ft. x 34 ft. detached garage.
6. The new detached garage must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured half way between the peak of the roof and the eaves, must not exceed 15 ft. The garage may have an upper-level storage area, but that area shall be accessible only via pull-down stairs. The proposed permanent interior staircase shall not be permitted.
7. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed addition, any proposed decks or patios, and the proposed detached garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. The plat of survey must also show the shore and floodplain setbacks of the adjacent residences and the decks on the lake side of those adjacent residences, as measured perpendicular to the shoreline.
8. Prior to the issuance of a zoning permit, a complete set of plans for the proposed addition to the residence and for the proposed detached garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
9. No grading shall be permitted beyond 30 ft. from the residence and no retaining walls shall be permitted within 75 ft. of the floodplain or within 5 ft. of the side lot lines. If compliance with this condition does not permit the addition to be constructed with an exposed basement, as proposed, the plans shall be modified to eliminate that exposure.
10. A detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the addition to the residence and the construction of the new detached garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.
11. The existing detached garage and the two existing storage sheds must be removed from the property no later than six (6) months after the issuance of a zoning permit for the new detached garage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested shore and floodplain setback variances for the proposed addition to the residence or denial of the requested offset variance for the detached garage would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. However, the approval of a floor area ratio variance and an accessory building floor area ratio special exception, with the recommended conditions, will allow a reasonable expansion of the residence and a reasonably-sized replacement garage, in keeping with other development in the area and located in conformance with all locational requirements of the Ordinance. As recommended, the addition to the residence and the new detached garage are not contrary to the public interest. Therefore, the approval of a floor area ratio variance and an accessory building floor area ratio special exception, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA02:134 CHARLES & JANE ALLEN

Mr. Ward *I make a motion to adopt the staff's recommendation, as stated in the Staff report, for the reasons given.*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for denial of shore and floodplain setback variances to permit the installation of new patios, but approval of a special exception from the shore setback requirement to permit the installation of new patios, and approval of the other requested variances and special exception to permit the proposed remodeling and expansion of the residence, with the following conditions:

1. The proposed patios must be no closer to the lake than 80% of the shore setback of the existing residence, thus requiring a special exception, rather than a variance, from the shore setback requirement. Based on the plat of survey submitted with the application, this will require the proposed eastern patio to be reduced in size so that it has a minimum shore setback of 36.64 ft.
2. The proposed patios must be no closer to the 100-year floodplain than 80% of the floodplain setback of the existing residence, thus eliminating the need for a variance or special exception from the floodplain setback requirement. Based on the plat of survey submitted with the application, this will require the proposed eastern patio to be reduced in size so that it has a minimum floodplain setback of approximately 34.4 ft.
3. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed additions to the residence and the proposed patios, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. The free-standing wood deck near the lake must be removed from the property, within six (6) months of the issuance of a zoning permit for the proposed construction.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested shore and floodplain setback variances for the proposed patios would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. However, the approval of a special exception from the shore setback requirement, with the recommended conditions, does not require the demonstration of an unnecessary hardship and is in conformance with the purpose and intent of the Ordinance because the new patios will be farther from the lake than the existing decks and the extremely non-conforming free-standing deck near the lake will be removed.

The approval of the other requested variances and special exception, with the recommended conditions, will allow a reasonable expansion of the residence, that is not contrary to the public interest and is in keeping with other development in the area. The proposed fireplace and chimney will extend no closer to the road than the existing residence and the other proposed additions to the residence will be located in conformance with all locational requirements of the Ordinance. Therefore, the approval of the requested road setback special exception for the proposed fireplace and chimney and of the requested variances from the floor area ratio requirement and to remodel a non-conforming structure in excess of 50% of its fair market value, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA02:135 JOHN & CHARLOTTE LAVIN

Mr. Judson

I make a motion to adopt the staff's recommendation, as stated in the Staff Report.

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed residence, including the proposed deck and patio, must be located in conformance with the road setback, offset, and shore setback requirements of the Ordinance. This will require the residence to be at least 19.46 ft. from the base setback line of Nokoma Dr., at least 35 ft. from the base setback line of Sand Beach Rd., at least 14 ft. from the west lot line, and at least 70 ft. from the shore. The proposed deck and patio must have shore setbacks of at least 65.5 ft.
2. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence, attached garage, deck, and patio, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
3. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior

to the issuance of a zoning permit. This is to ensure the construction of the new residence does not result in adverse drainage onto the adjacent property or the road. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the channel, and not to the neighboring property or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 2.

4. The wet bar in the second floor office may not be a full kitchen, i.e., it may not contain both a refrigerator and a stove.
5. That portion of the attic storage area with a ceiling height of 6 ft. or more shall not exceed 400 sq. ft., unless the interior door to the attic storage area is eliminated and that area is accessible only via a pull-down stairs from the garage. This will result in a maximum floor area ratio of 24.9%.
6. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
7. The non-conforming shed near the lake must be removed from the property within six (6) months of the issuance of a zoning permit for the new residence.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property in the form of a new single-family residence located farther from the 100-year floodplain than the existing residence and in conformance with all other locational requirements of the Ordinance. The proposed residence is not contrary to the public interest and will be consistent with other development in the area. A hardship exists because compliance with the floodplain setback requirement does not result in a reasonable building envelope. Finally, the approval of this request, with the recommended conditions, will result in the removal of an extremely non-conforming shed that is located within the 100-year floodplain. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA02:132 CATHERINE LANGE

Ms. Radler

I move that we adopt the staff's recommendation to deny the requested floodplain setback variances for the replacement patio and the new patio and to approve a floodplain setback variance for the installation of a patio/stoop adjacent to the patio door on the lake side of the lowest level of the residence, but also approve a floodplain

setback variance to permit restoration of the existing retaining walls, in the same location, at the same height, and constructed of the same material as the existing retaining walls.

Condition #3 of the staff's recommendation shall be changed to read "The old stone patio shall not be replaced. The area now occupied by that deteriorated patio may be landscaped, but it shall not be re-graded or covered with impervious materials. In addition, no filling or grading shall be permitted within the 100-year floodplain."

The reasons shall be as stated in the Staff Report, with the reference to retaining walls removed from the first sentence and with a sentence added to read as follows:

"Approving the restoration of the existing retaining walls will actually maintain the integrity of the floodplain as long as the area in between is done with landscape materials instead of impervious surfaces."

The motion was seconded by Mr. Ward and approved with four yes votes. Mr. Schultz abstained.

The staff's recommendation was denial of the requested floodplain setback variances to permit the proposed 12 ft. x 15 ft. replacement patio, the proposed 12 ft. x 17 ft. new patio adjacent to the lowest level of the residence, and the proposed retaining wall, but for approval of a floodplain setback variance to permit the installation of a patio/stoop adjacent to the patio door on the lake side of the lowest level of the residence, with the following conditions:

1. The patio/stoop to be installed adjacent to the patio door on the lake side of the lowest level of the residence may be no larger than 20 sq. ft.
2. If desired, a sidewalk or walkway may be constructed to connect the patio/stoop adjacent to the patio door on the lake side of the lowest level of the residence to the stairs leading down from the east side of the residence, provided that sidewalk or walkway does not exceed 3 ft. in width.
3. The old stone patio shall not be replaced. The area now occupied by that deteriorated patio may be landscaped and re-graded, but no new retaining walls may be constructed. In addition, no filling or grading shall be permitted within the 100-year floodplain.
4. Prior to the issuance of a zoning permit for a patio/stoop adjacent to the patio door on the lake side of the lowest level of the residence, a revised plat of survey, showing ground level elevations at the northeast and northwest corners of the residence, the elevation of the floor of the lowest level of the residence, and the location of the proposed patio/stoop and any proposed sidewalks or walkways, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

5. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure that any proposed grading or filling does not result in adverse drainage or impact the 100-year floodplain. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.
6. Within three (3) months of the installation of the patio/stoop and any new sidewalks or walkways, an “as-built” plat of survey, showing the elevation of the patio/stoop, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested floodplain setback variances to permit the proposed 12 ft. x 15 ft. replacement patio, the proposed 12 ft. x 17 ft. new patio, and the proposed retaining wall, would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. However, the approval of a floodplain setback variance, as recommended, to permit a 20 sq. ft. patio/stoop to be installed adjacent to the patio door on the lake side of the lowest level of the residence, is not contrary to the public interest and will permit reasonable and safe access to the existing patio door, while not adversely affecting the adjacent properties or the lake. Therefore, the approval of a floodplain setback variance to permit the installation of a 20 sq. ft. patio/stoop adjacent to the patio door on the lake side of the lowest level of the residence, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA02:136 MARK & MARTHA SMITH

Ms. Radler

I move that we approve the request in accordance with the staff's recommendation, but it shall be noted that we consider this approval to be for a shore setback special exception, rather than a variance, because the new three-season room will not be any closer to the lake than the existing three-season room and it will be rebuilt at the same size and on the existing concrete foundation.

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The new three-season room may be no closer to the lake than the existing three-season room.
2. There shall be no removal of trees or existing vegetation between the residence and the lake.

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The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow the replacement of a deteriorated three-season room with a new three-season room in the same location and on the existing foundation. The new three-season room will not extend any closer to the lake than the existing three-season room and it will not require the removal of any vegetation. The location of the three-season room, approximately 25 ft. above the elevation of the lake and facing a wooded slope, has minimal visual and aesthetic impact on the lake and is not contrary to the public interest. Finally, the proposed hot tub area conforms to all locational requirements of the Ordinance. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA01:039 ROGER THORSON

Ms. Voelker

I make a motion to amend Condition No. 4 of our approval of June 27, 2001, to read as follows:

“Prior to the issuance of a zoning permit, an updated plat of survey showing the location of all structures on the property, must be prepared by a registered land surveyor and submitted to the Planning Division staff for review and approval.” All other conditions shall remain as stated in the Decision Sheet dated June 28, 2001.

The motion was seconded by Ms. Radler and carried with four yes votes. Mr. Judson voted no.

ADJOURNMENT:

Mr. Judson

I make a motion to adjourn this meeting at 9:18 p.m.

The motion was seconded by Ms. Voelker and carried unanimously.

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment